

IN THE MATTER OF	:	NEW JERSEY DEPARTMENT OF EDUCATION
THE CERTIFICATES OF	:	STATE BOARD OF EXAMINERS
VINCENT MARTONE	:	ORDER OF SUSPENSION
_____	:	DOCKET NO: 521-04/99-228

At its meeting of September 21, 2000, the State Board of Examiners reviewed a decision forwarded by the Commissioner of Education that had dismissed Vincent Martone from his tenured position with the State-Operated School District of the City of Jersey City (hereafter District) for charges of unbecoming conduct. Martone currently holds Teacher of Elementary School, Teacher of Social Studies and Principal/Supervisor certificates.

This case originated on September 16, 1996 when the District certified tenure charges against respondent, Vincent Martone. Martone was employed as a Supervisor of Mathematics. The District charged him with unbecoming conduct for distributing a portion of the 1995 Early Warning Test (EWT) even though he knew it was a secure test and was not to be possessed or distributed by or to any school personnel.

The Commissioner of Education transmitted the case to the Office of Administrative Law (OAL). Administrative Law Judge (ALJ) Jeffrey A. Gerson heard testimony on several days in July 1997. After receiving post-hearing submissions, the record closed and the ALJ issued an Initial Decision on October 30, 1997.

In that decision ALJ Gerson recounted the testimony of several administrators who detailed the meetings held and memos sent to inform the supervisory staff, including Martone, as to the security procedures to be used beginning with the new 1994 EWT. (Initial Decision, slip op. at 2-4). The ALJ found that Martone had knowingly possessed and distributed a portion of the 1995 EWT even though he knew it was a secure test

which had to be returned to the contractor immediately after its administration. (Initial Decision, slip op. at 7).

After considering all the testimony, ALJ Gerson found that Martone's conduct was improper. The Judge found that Martone had in fact distributed the test to another staff member. He also found that Martone's testimony was not credible when he testified that he was unaware of the new security procedures surrounding the 1995 EWT. (Initial Decision, slip op. at 7-8). The ALJ therefore concluded that the District had proven by more than a preponderance of evidence that Martone had engaged in conduct unbecoming a teaching staff member. (Initial Decision, slip op. at 8).

In considering the appropriate penalty, Judge Gerson examined Martone's prior record. The ALJ recalled that Martone had been previously reprimanded for teaching at Essex County College in derogation of this contract with the District. The Judge deemed Martone's conduct in this instance to be "significantly more serious than that for which he had previously been reprimanded...." (Initial Decision, slip op. at 8). Thus, based on his review of the entire record, the ALJ concluded that Martone's conduct warranted a serious penalty. He determined that Martone's breach was too substantial to allow for his continued employment in the district. (Initial Decision, slip op. at 8). Consequently, the ALJ ordered Martone dismissed from his tenured employment. (Initial Decision, slip op. at 9).

In a decision dated December 18, 1997, the Commissioner of Education affirmed the ALJ's Initial Decision as to the tenure charges against Martone. The Commissioner agreed with the ALJ that the local board had proven its case against Martone with regard to the tenure charges of unbecoming conduct. (Commissioner's Decision, slip op. at 11).

The Commissioner reiterated the Department of Education's long-standing emphasis on the importance of maintaining test security. (Commissioner's Decision, slip op. at 11). Moreover, he rejected Martone's suggestion that an appropriate penalty would be dismissal from his supervisory position only and the possible surrender of his supervisory certificate. Instead the Commissioner found that the loss of tenure was warranted here in order to impress upon Martone, and others, the seriousness of the infraction. (Commissioner's Decision, slip op. at 12). Accordingly, the Commissioner affirmed Martone's removal from his tenured employment with the State-Operated School District of the City of Jersey City and transmitted the matter to the State Board of Examiners pursuant to N.J.A.C. 6:11-3.6 for appropriate action regarding Martone's certificates. (Commissioner's Decision, slip op. at 12). Martone appealed from the Commissioner's decision to the State Board of Education. On May 6, 1998, the State Board of Education affirmed the Commissioner's decision. (State Bd. of Ed. Decision, slip op. at 1).

Thereafter, on April 15, 1999, the State Board of Examiners issued Martone an Order to Show Cause why his certificates should not be suspended or revoked. The Order was predicated on the charges of unbecoming conduct that had been proven in the tenure hearing.

Martone was sent the Order to Show Cause by regular and certified mail on May 4, 1999. The Order provided that an Answer must be filed within 20 days. Martone filed an Answer on June 4, 1999. In response to this Answer the Order to Show Cause was amended to correct certain procedural mistakes. The amended Order to Show Cause was sent to Martone on July 29, 1999. On December 29, 1999 Martone was advised that he had an additional ten days to respond. He was also told that if he did not answer the

allegations in the Order to Show Cause would be deemed admitted and the State Board of Examiners would proceed to a decision as to revocation on the basis of the evidence before it.

Martone filed an Answer on January 7, 2000. In that Answer he admitted that the district had brought tenure charges against him. He also admitted that the ALJ and the Commissioner sustained those charges and that Martone had been dismissed from his tenured employment. (Answer, ¶¶ 1-5). In the remainder of his Answer, Martone argued that revocation or suspension of his certificates was not automatic following a tenure proceeding. (Answer, ¶ 6).

Thereafter, pursuant to N.J.A.C. 6:11-3.6(a)1, on April 28, 2000, the Board of Examiners sent Martone a hearing notice by regular and certified mail. The notice explained that, since it appeared no material facts were in dispute regarding the tenure charges, Martone had the opportunity to submit written arguments as to whether the conduct addressed in the Order to Show Cause constituted conduct unbecoming a certificate holder. It also explained that, upon review of the charges against him and the legal arguments tendered in his defense, the State Board of Examiners would determine if his offense warranted action against his certificates. Thereupon, the Board of Examiners would also determine the appropriate sanction, if any.

Martone responded to the Hearing Notice on May 23, 2000. In that response, Martone claimed that he did not use the test to boost his students' test scores or to secure any advantage. (Hearing Response, p. 1). He also repeated his argument from his tenure proceeding that his actions, although a breach in test security, were not done knowingly. He maintained that his failure to "maintain his knowledge of the testing procedures...is

not a failure of sufficient gravity to ban him for life as an educator.” (Hearing Response, p.5).

The threshold issue before the State Board of Examiners in this matter, therefore, is whether Martone’s conduct and his subsequent loss of tenure constitute conduct unbecoming a certificate holder. At its meeting of September 21, 2000, the State Board of Examiners reviewed the charges and papers Martone filed in response to the Order to Show Cause. After reviewing his response, the Board of Examiners determined that no material facts related to Martone’s offense were in dispute since he admitted the charges at the tenure hearing were proven and led to his dismissal. Thus, Martone has not denied the charges in the Order to Show Cause. Accordingly, his actions regarding the improper possession and distribution of the 1995 EWT constitute conduct unbecoming a certificate holder.

The State Board of Examiners must now determine whether Martone’s offense as set forth in the Order to Show Cause, represents just cause to act against his certificates pursuant to N.J.A.C. 6:11-3.6(a)1. We find that it does.

The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated inefficiency, incapacity, conduct unbecoming a teacher or other just cause. N.J.A.C. 6:11-3.4. Furthermore, unfitness to hold a position in a school system may be shown by one incident, if sufficiently flagrant. Redcay v. State Bd. of Educ., 130 N.J.L. 369, 371 (S. Ct. 1943), *aff’d*. 131 N.J.L. 326 (E & A 1944). In this instance, there can be no dispute that Martone’s actions, knowing or not, were detrimental to test security. Although there is no allegation that Martone used the test to his own advantage, at the very least his actions show a disregard for

maintaining up-to-date knowledge of his responsibilities as a supervisor and teaching staff member. The Board of Examiners agrees with the Commissioner that Martone's actions warrant a serious penalty. It does believe, however, that Martone's actions were not so egregious as to warrant the permanent revocation of his certificates. After much reflection, the Board believes that suspending all of Martone's certificates until the next school year will properly communicate how strongly it feels about this breach.

Accordingly, on this 21st day of September 2000 it is therefore ORDERED that Vincent Martone's Teacher of Elementary School, Teacher of Social Studies and Principal/Supervisor certificates be suspended effective November 1, 2000 through August 31, 2001.

Secretary
State Board of Examiners

Date of Mailing: October 30, 2000

Appeals may be made to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.

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